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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,851	06/01/2001	John M. Lipscomb	91.001	1434

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EXAMINER

SCHULTERBRANDT, KOFI A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 03/27/2002

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/871,851

Applicant(s)

LIPSCOMB ET AL.

Examiner

Kofi A. Schulterbrandt

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-20 is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This first Office Action is in response to Applicant's originally filed application in this case.

#### ***Information Disclosure Statement***

The listing of references on page 1 of the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 4, 5 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, from which claims 2-16 are dependent, is drawn to a subcombination (cat litter scoop holder). However claims 2, 4 and 13 appear to be claiming the combination (cat litter scoop holder and cat litter scoop) by positively reciting features specific to the cat litter scoop. Applicant must either claim the combination or remove the positively recited features of the cat litter

scoop. The rejections below are based on a reading of the claims as though Applicant intended to claim the subcombination (no patentable weight given to specific features of the scoop).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1-4, 8-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Mattei (Des. 298,712). Mattei teaches each feature of the claimed invention.

Regarding claims 1-4, Mattei teaches a base, retaining lip, rear wall, a scoop receiving pocket, a trough, and a hollow (below the perforated portion of the trough) as shown in the attached red marked up copy of Mattei's Fig. 7, Sheet 4 of 4. Regarding claim 8-16, Mattei's holder teaches sidewalls having v-shaped openings and an inturned flange as shown in the above-mentioned attached red marked up copy.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mattei (Des. 298,712), in view of Murphy (Des. 329,775). The above references, when taken together, teach each feature of the claimed invention.

Mattei teaches each feature of the claimed invention except a skirt. Murphy, however, teaches a skirt. It would have been obvious to one of ordinary skill in the art at the time of invention to have added Murphy's skirt to Mattei's base to improve Mattei's stability when Mattei's holder sits on a flat surface.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mattei (Des. 298,712), in view of Correia (5,738,020). The above references, when taken together, teach each feature of the claimed invention.

Mattei teaches each feature of the claimed invention except a bracket that removably mounts the holder to a vertical surface. Correia, however, teaches a bracket (60) having a spacer (elevator portion between 69 and 60A), an aperture (32), a mounting tab (60A) and fingers (69). It would have been obvious to one of ordinary skill in the art at the time of invention to have added Correia's bracket and aperture to Mattei's holder in order to be able to store Mattei's holder on a vertical surface.

***Allowable Subject Matter***

Claims 17-20 allowed.

***Reasons For Indication of Allowable Subject Matter***

The following is a statement of reasons for the indication of allowable subject matter: Regarding claims 17-20, the prior art does not teach, in addition to the remaining features of claims 17 and 20, an outwardly inclined retaining wall that extends outwardly from adjacent the rear wall.

***Prior Pertinent Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. '293 to Erickson; '058 to O'Rourke; '186 and 258 to Larsen et al.; '627 to Simon; '853 to Hammond; '029 to Renforth; and '549 to Brownell. The above references disclose various types of cat litter scoops and holders therefore.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kofi A. Schulerbrandt whose telephone number is (703) 306-0096. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone numbers for the organization where this application or proceeding is assigned are


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(703) 305-3597 for regular communications and (703) 308-3519 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
Kofi Schulterbrandt  
March 19, 2002

  
RAMON O. RAMIREZ  
PRIMARY EXAMINER  
ART UNIT 355-3632